No. —

In the Supreme Court of the United States

OCTOBER TERM 1960

No. —

DONALD CLARK, PETITIONER

v.

EDMUND ZIMMERER
COMMISSIONER OF PUBLIC HEALTH
OF THE STATE OF IOWA

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF IOWA

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v.

EDMUND ZIMMERER
COMMISSIONER OF PUBLIC HEALTH
OF THE STATE OF IOWA.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF IOWA

Donald Clark petitions for a Writ of Certiorari to review the judgement of the Supreme Court of Iowa entered on February 8th, 1961, sustaining in part and reversing in part judgment of District Court of Iowa in and for Pottawattamie County.

OPINION BELOW

The Decision of The Supreme Court of Iowa is reported
North Western Reporter Vol. 107 (2d)
Page 726 Appendix D

No Petition for rehearing was made to The Supreme Court of Iowa.

On the 6th day of March, 1961, The Supreme Court of Iowa, made and entered its orler as follows;

> "It is ordered that procedendo shall not issue herein until June 8th, 1961 or until such earlier time as appellant's Petition for Certiorari is denied, upon such denial, prior to June 8th, 1961 procedendo shall issue forthwith."

JURISDICTION

The Supreme Court of Iowa entered its opinion, decree and judgment, February 8th, 1961 sustaining petitioner's right to create, manufacture and produce prosthetic devices, but denied petitioner's right to market, sell or distribute prosthetic devices, by petitioner created, manufact-

ured and produced, except only to dentists. The jurisdiction of this Court is invoked under Title 28 U.S.C 1257 (3).

QUESTION PRESENTED

Can The Supreme Court of Iowa deny to petitioner the right to market, sell and distribute direct to the public, prosthetic devices, by petitioner created, manufactured and produced when and where no statute of the State of Iowa exists, prohibiting to petitioner, such right.

STATUTE INVOLVED

The relevant provisions of the Statutes of the State of Iowa, and of the Constitution of the United States are as follows:

> "No person owning or conducting any place where dental work of any kind is done or contracted for, shall employ or permit any unlicensed dentist to practice dentistry in said place, but persons who are not licensed dentists may perform laboratory work." (Code of Iowa Section 153.5)
>
> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
>
> "United States Constitution, Amendment Fourteen (14), Section One (1)."
>
> "The Congress shall have power to regulate commerce with foreign nations and among the several states."
>
> "United States Constitution, Article One (1), Section Eight (8)."

STATEMENT OF THE CASE

Respondent herein, as Commissioner of Public Health of State of Iowa, filed his petition in District Court of Iowa, Pottawattamie County, alleging that petitioner herein was practicing dentistry, and prays that he be enjoined therefrom. (Appendix A). Petitioner herein answered, denying that he was or had practiced dentistry, alleged that he is a

laboratory technician, duly recognized as such under the laws of the State of Iowa, and empowered to perform work and render services as a laboratory technician. That he is preforming work and rendering services as a dental laboratory technician in and under the laws of the State of Iowa. He pleads the laws of the State of Iowa, the Constitution of the State of Iowa, the laws of the United States and the Constitution of the United States as a full and complete bar to the action of the plaintiff and counterclaims, petitions for a declartory judgment, declaring his rights, (Appendix B). Trial Court granted prayer of petitioner in Trial Court, enjoined petitioner herein "either by himself or agents, in his own name or otherwise from operating a dental laboratory or in any manner engaging in the manufacture, sale dispensing or offering for sale any product, device, appliance or thing designed or to be used in the oral cavity as a replacement or artificial substitution for the natural part of any human being, commonly or professionally known as a prosthetic device, meaning to include any and all such devices whether or not specifically mentioned herein." Such Decree and Judgement of Trial Court, appealed to Supreme Court of Iowa, and following propositions, and errors of Trial Court relied on.

> "Decree of Trial Court is in violation of the Constitution of the United States and particularly Amendment Fourteen (14) of the constitution of the United States and is in violation of the public policy of the United States."
>
> "The Trial Court erred in holding that a public health question was involved in the issues of this case and the Court was without authority to find and make any determination of a public health question in this case."
>
> Opinion and judgment of Supreme Court of Iowa, (Appendix D).
>
> The Trial Court and the Supreme Court of Iowa refused to pass upon the Federal Constitution questions presented to them by this petitioner. (Appellant's Brief and Argument before Supreme Court of Iowa - Pages fourteen (14) and fifteen (15).

The federal questions sought to be reviewed here, were raised in the State Trial Court, by answer of this petitioner in

due order, and in The Supreme Court of Iowa by assignment of errors of Trial Court, by Appellate Brief and Argument.

REASONS FOR GRANTING THE WRIT

Petitioner, is a dental laboratory technician, trained under the GI Bill of Rights, after three years and seven months service in U. S. Navy and fourteen Atlantic Ocean convoy trips as Armed Guard, Merchant Marine Vessels, Second World War. He was born in Creighton, Nebraska an American citizen. His work is to construct or repair prosthetic dentures, bridges or the like, is not a professional person but a craftsman. His skill is similar to the skill of the mechanic and his work consists mainly in shaping and forming inert matter into a product suitable as a substitue of the natural teeth. He purchases much of the substances with which he works from states other than the state in which he resides and works. Artificial teeth, already fabricated in Chicago, Illinois, New York, N. Y., Omaha, Nebraska and Kansas City, Missouri, also other substances used by him from same places and transported to him by interstate common carriers. He ships his product interstate by U. S. Postal Service and common carriers. He operates interstate and intrastate. He and his contemporary craftmen make, manufacture and produce approximately ninety percent of all dental prosthetics used by the public.

The ruling of The Supreme Court of Iowa affirms and allows petitioner's right to manufacture and produce dental prosthetics and denies petitioner the right to market, sell or distribute the same, except to dentists.

The right of a person to follow a recognized and useful occupation is protected by the guaranty of liberty in our fundamental law.

> Amendment XIV to the Constitution of the United States
> Meyer vs. Nebraska, 262 U.S. 390
> Allgeyer vs. Louisiana, 165 U.S. 589

Police power of the state may not masquerade as in the interests of public health or welfare when its real purpose is to protect the interests and welfare of a specially privileged group.

New York Ice Co. vs. Liebman, 285 U.S. 262

The prohibiting of a person from selling a prosthetic by him produced, except to a dentist, is not reasonably related to the protection of public health and constitutes a deprivation of "liberty" without due process of law. A calling may not be prohibited by a decree of a Court or by a legislature unless (1) it is inherently injurious to the public health, safety or morals, or (2) has a tendency in that direction.

Mugler vs. Kansas, 123 U.S. 623.

At no place was such showing made before the Trial Court or the Supreme Court of Iowa.

The opinion of The Supreme Court of Iowa, clearly deprives petitioner of liberty. It imposes a drastic restriction upon petitioner, the free pursuit of his occupation, by denying him the right to sell his product except to dentists, and the pursuit of a calling or occupation is a part of the liberty protected by the due process clauses. (Allgeyer vs. State of Louisiana, 165 U.S. 589).

> "The right to follow any of the common occupations of life is an inalienable right. It was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence. This right is a large ingredient in the civil liberty of the citizen. But it does not abridge the privileges and immunities of a citizen of the United States to prohibit him from pursuing his chosen calling, and giving to others the exclusive right of pursuing it, it clearly does deprive him to a certain extent of his liberty. For it takes from him the freedom of adopting and following the pursuit which he prefers, which, as already intimated, is a material part of the liberty of the citizen."

It is true that these remarks were made in regard to questions of monopoly, but they well describe the rights which are covered by the word "liberty" as contained in the 14th Amendment. The liberty mentioned in that amendment includes the right of the citizen to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways, to live and work where he will, to earn his livelihood by any lawful calling, to pursue any livelihood or avocation and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a sucessful conclusion the purposes above mentioned. Without doubt the liberty

guaranteed by the 14th Amendment denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge and, generally to enjoy those privileges long recognized at Common Law as essential to the orderly pursuit of happiness by free men. The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action and we add, a Decree and Judgment of Court which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect. Determination by a Court or by the Legislature of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the Supreme Court of the United States.

There appears to be no dissent from the proposition that the right of a person to follow a recognized and useful occupation is protected by the guaranty of "liberty" in our fundamental law.

Petitioner is entitled, therefore, in defense of his rights to put the Judgment of Supreme Court of Iowa to the "due process" test. This test as established and defined by the formidable authority cited above required that the Court determine whether service of the type sold by defendant have sufficient connection with the public health to make him properly subject to a prohibitive decree by a Court and whether the regulation and prohibition adopted by the Court is reasonable, or whether it is so extreme as to lack a real, direct, or substantial relation to the protection of the public health. It is the contention of petitioner that the Court committed prejudicial error as a matter of fundamental constitutional law by its decree hereinbefore referred to and quoted in part, which should entitle petitioner to a reversal and further entitling the petitioner to a finding by the Supreme Court of the United States that the petitioner has the right to follow his recognized and useful occupation which is protected by the guaranty of "liberty" in our fundamental law.

A Judgment of Court not based upon existing law, which attempts to force this petitioner to abandon his independent calling, further deprives him of property without due process of law.

By the decision of the Supreme Court of Iowa, sought to

be reviewed, it is recognized that petitioner manufactures articles, and has a right to do so, yet petitioner is denied the right to move his product interstate as by Federal law allowed. This, petitioner represents to Your Honorable Court, is in violation of Article One (1), Section Eight (8) of the Constitution of the United States. Chief Justice Marshall laid down the basic rule in Brows vs. Maryland, 12 Wheat 419, that in such premise, only the Congress of the United States possesses the power to regulate commerce moving interstate. Such rule is suppported by Foster vs. Haydel, 73 L Ed 147. State power to regulate interstate commerce wherever it exists is not the power to destroy it unless Congress has expressly so provided. Panhandle E. Pipe Line Co. vs. Public Service Comm., 92 L Ed 128.

Petitioner contends that the decree and judgment of the Supreme Court of Iowa abridges his right of liberty, of property, and to move his products in interstate commerce and is repugnant to provisions of the Constitution of the United States as hereinbefore set out.

CONCLUSION

For the foregoing reason this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

H. S. Life,
Oskaloosa, Mahaska County, Iowa.
Counsel for Petitioner.

April 1961

APPENDIX A

IN THE DISTRICT COURT OF THE STATE OF IOWA
IN AND FOR POTTAWATTAMIE COUNTY

STATE OF IOWA ex rel.
DR. EDMUND G. ZIMMERER,
Commissioner of Public Health
of the State of Iowa
Plaintiff

VS

DONALD J. CLARK, d b a
Public Dental Laboratory
Defendant

PETITION IN EQUITY

Comes now the plaintiff and for cause of action against defendant states:

Par. 1. That Dr. Edmund G. Zimmerer is the duly appointed, qualified and acting Commissioner of Public Health and as such is the head of the State Department of Health of the State of Iowa.

Par. 2. That the defendant, Donald J. Clark, is a resident of Pottawattamie County, Iowa, and maintains and operates the Public Dental Laboratory located at 19 Pearl Street, Council Bluffs, Iowa.

Par. 3. That prior to and at this time, the defendant, Donald J. Clark, has been and is now engaged in the practice of dentistry within the definition of that profession as provided in Section 153.1, 1958 Code of Iowa, in that he has publicly professed to be skilled in the science of dentistry, and has treated or attempted to correct by appliance a disorder, deformity or defect of the oral cavity, teeth and gums of the human being, and further, in that defendant has given advice and assistance for and has provided facilities for making and taking impressions, bites, casts and designs preparatory to, or for the purpose of, or with a view to the making, producing, constructing, fitting, furnishing, supplying, altering, and repairing such appliance as aforesaid.

Par. 4. That defendant, Donald J. Clark, has not at any

time material hereto nor does he now possess a license from the State of Iowa to practice denistry.

Par. 5. That this action is brought by the plaintiff pursuant to the provisions of Section 147.88, 1958 Code of Iowa, to restrain the defendant, Donald J. Clark, acting individually or doing business as or under the trade name Public Dental Laboratory by permanent injunction from practicing or engaging in the practice of dentistry as defined in Section 153.1, 1958 Code of Iowa, without first having obtained from the State Department of Health a license to practice that profession as required by the provisions of Section 147.2, 1958 Code of Iowa.

WHEREFORE, plaintiff prays that the defendant, Donald J. Clark, individually or doing business under the trade name Public Dental Laboratory, or any other trade name, be enjoined from engaging in the practice of dentistry as defined by the provisions of Section 153.1, 1958 Code of Iowa, without possessing a license as required by law to engage in the practice of that profession, and that upon final hearing a permanent injunction and writ thereof be issued against the defendant, and that the plaintiff have such other and further relief as may be equitable in the premises and have judgment for costs in this action.

APPENDIX B

IN THE DISTRICT COURT OF THE STATE OF IOWA
IN AND FOR POTTAWATTAMIE COUNTY

STATE OF IOWA ex rel.
DR. EDMUND G. ZIMMERER,
Commissioner of Public Health
of the State of Iowa
Plaintiff

VS

DONALD J. CLARK, d b a
Public Dental Laboratory
Defendant

ANSWER, CROSS CLAIM AND CROSS PETITION

Comes now the defendant, Donald J. Clark, and makes this his answer to plaintiff's Petition, his Cross Claim and his Cross-Petition.

DIVISION I
Answer

Comes now the defendant in the above entitled cause and makes this his Answer to plaintiff's Petition.

Par. 1. This defendant denies specifically all that portion of Paragraph 1 of Plaintiff's Petition not stricken by the Court on defendant's Motion to Strike.

Par. 2. Defendant denies specifically Paragraph 2 of plaintiff's Petition.

Par. 3. Defendant denies specifically all of Paragraph 3 of plaintiff's Petition not striken by the Court by ruling sustaining defendant's Motion to Strike.

Par. 4. Defendant denies specifically Paragraph 4 of plaintiff's Petition.

Par. 5. Defendant denies specifically Paragraph 5 of plaintiff's Petition.

Par. 6. Defendant denies specifically Paragraph 6 of plaintiff's Petition.

Par. 7. Defendant denies specifically Paragraph 7 of plaintiff's Petition.

Par. 8. Defendant denies specifically Paragraph 8 of plaintiff's Petition.

Pleading affirmatively this defendant alleges that he is a dental laboratory technician and duly recognized as such under the laws of Iowa, and empowered under the laws of the State of Iowa, to perform work and render services as a dental laboratory technician. That he is lawfully performing work and rendering services as a dental laboratory technician in and under the laws of the State of Iowa. That he has performed no work and rendered no services in violation of the laws of the State of Iowa. That he is a graduate of a dental laboratory technician school and holds a certificate to such effect. That he is recognized under the laws of the State of Iowa and of the United States as a dental laboratory technician and thereunto duly qualified and has and holds the right under the laws of the State of Iowa, the constitution of the State of Iowa, the laws of the United States and the constitution of the United States to perform dental laboratory work and to market, sell and perform the services and the product of his services as a dental laboratory technician and he pleads the laws of the State of Iowa, the constitution of the State of Iowa, the laws of the United States and the constitution of the United States as a full and complete bar to the action of the plaintiff against the said defendant and further specifically alleges that the action of the plaintiff is the product of civil conspiracy of which the said plaintiff and specifically Edmund G. Zimmerer, Commissioner of Public Health of the State of Iowa, is a party to, in this, that: That this action was brought by Edmund G. Zimmerer as Commissioner of Public Health of the State of Iowa, the product of influence, connivance and conspiracy of persons other than the said Edmund G. Zimmerer, conniving, working, operating and moving to in conjunction with each other achieve a common and unlawful purpose of denying to this said defendant his right and rights under the laws of the State of Iowa, the constitution of the State of Iowa, the laws of the United States and of the constitution of the United States to do work, to perform and render services as a dental laboratoy technician.

DIVISION II
Cross-Petition

Comes now Donald J. Clark and makes this his Cross-Pe-

tition against Edmund G. Zimmerer as Commissioner of Public Health of the State of Iowa.

Donald J. Clark, for cause of action against Edmund G. Zimmerer as Commissioner of Public Health of the State of Iowa complains and alleges:

Par. 1. That at all times appurtenant to this said cause of action Donald J. Clark was and is now a citizen and subject of the State of Iowa and of the United States of America.

Par. 2. That at all times appurtenant to this said cause of action and at the present time Edmund G. Zimmerer was and is Commissioner of Public Health of the State of Iowa.

Par. 3. That Donald J. Clark is a dental laboratory technician duly qualified to do the work and perform the services of a dental laboratory technician, all as recognized by the laws and public policy of the State of Iowa and the laws and public policy of the United States.

Par. 4. That Edmund G. Zimmerer as Commissioner of Public Health of the State of Iowa is now by legal process in the District Court of Iowa in and for Pottawattamie County at Council Bluffs, Iowa, attempting to deny the said Donald J. Clark, the right to engage in and perform the serviecs of a dental laboratory technician, all contrary to the laws of the State of Iowa, the constitution of the State of Iowa, the public policy of the State of Iowa, the laws of the United States, the constitution of the United States and the public policy of the United States. That the practice work and services of dental laboratory technicians is recognized by the public policy of the State of Iowa, the laws of the State of Iowa, the public policy of the United States and the laws of the United States as an endeavor in which a citizen of the State of Iowa and a citizen of the United States may engage, and in the State of Iowa a number of individuals have been for many years and are now engaged in the work of and the performance of services of a dental laboratory technician and the right to execute such work and perform said services is fully recognized by the laws of the State of Iowa, the constitution of the State of Iowa, the public policy of the State of Iowa, the laws of the United States, the constitution of the United States, and the public policy of the United States.

Par. 5. That Donald J. Clark has complied with and will comply with all constitutional laws, rules and regulations ap

plicable to dental laboratory technicians in the performance of the work and the rendering of services of a dental laboratory technician.

Par. 6. That Donald J. Clark has no employment or qualifications whereby he can earn a living for himself and his family other than as a dental laboratory technician.

Par. 7. That an actual controversy has arisen between Donald J. Clark on the one hand, the State of Iowa and Edmund G. Zimmerer as Commissioner of Public Health of the State of Iowa on the other hand the said Donald J. Clark contending that he has the right to do the work of and perform the services of a dental laboratory technician within the State of Iowa, all as provided by the laws of the State of Iowa, the constitution of the State of Iowa and the public policy of the State of Iowa, the laws of the United States, the constitution of the United States and the public policy of the United States, and the State of Iowa and Edmund G. Zimmerer denies the possession of said right by Donald J. Clark illegally and unconstitutionally and contrary to the laws of the State of Iowa, the constitution of the State of Iowa, the laws of the United States and the constitution of the United States and the State of Iowa and Edmund G. Zimmerer as Commissioner of Public Health of the State of Iowa is now attempting to unlawfully deprive the said Donald J. Clark of his legal right to engage in the work and perform the services of a dental laboratory technician and asserting that the said Donald J. Clark is in possession of none of these said rights.

WHEREFORE, the said Donald J. Clark prays that the Honorable Court make a declaration of his legal rights, liabilities, duties, responsibilities and legal relations as a dental laboratory technician and that this Court enter a judgment and or decree and therein determine and or declare the invalidity of any action on the part of the State of Iowa and or Edmund G. Zimmerer as Commissioner of Public Health of the State of Iowa in attempting to deny unto Donald J. Clark as lawful and constitutional the right to perform the work of and render the services of a dental laboratory technician, and that the Court further declare that the work of and the performance of the services of a dental laboratory technician is a legal and lawful pursuit in which a citizen of the State of Iowa and of the United States may engage in the State of Iowa, and that this Court add such other, further, different and general

relief as he may be entitled to under the laws of the State of Iowa, the constitution of the State of Iowa, the public policy of the State of Iowa, the laws of the United States, the constitution of the United States and the public policy of the United States, and including costs of this action.

APPENDIX C

IN THE DISTRICT COURT OF THE STATE OF IOWA
IN AND FOR POTTAWATTAMIE COUNTY

STATE OF IOWA ex rel.
DR. EDMUND G. ZIMMERER,
Commissioner of Public Health
of the State of Iowa
Plaintiff

VS

DONALD J. CLARK, d/b/a
Public Dental Laboratory
Defendant

ANSWER TO DIVISION II, CROSS-PETITION

DIVISION I

Comes now the State of Iowa and for its answer to Defendant's "DIVISION II, CROSS-PETITION" states:

Par. 1. It admits paragraph 1.

Par. 2. It admits paragraph 2.

Par. 3. In answer to paragraph 3, Plaintiff states it does not know whether or not, Donald J. Clark is a dental laboratory technician duly qualified to do the work and perform the services of a dental laboratory technician."

Par. 4. In answer to paragraph 4, Plaintiff specifically denies, "That Edmund G. Zimmerer as Commissioner of Public Health of the State of Iowa is now by legal process in the District Court of Iowa in and for Pottawattamie County at Council Bluffs, Iowa, attempting to deny the said Donald J. Clark the right to engage in and perform the services of a dental laboratory technican."

Par 5. In answer to paragraph 5 Plaintiff states that it is solely concerned, as appears on the face of its petition, with the unlawful practice of dentistry by the said Donald J. Clark and is not concerned with what acts other than the unlicensed practice of dentistry the said Donald J. Clark may have carried on as "dental laboratory technician."

Par. 7. Plaintiff specifically denies that any controversy

has risen with the defendant as to whether or not, "he has the right to do the work of and perform the services of a dental laboratory technician."

Plaintiff further specifically denies Defendant's allegation in paragraph 7 that, "the State of Iowa and Edmund G. Zimmerer as Commissioner of Public Health of the State of Iowa is (sic) now attempting to unlawfully deprive the said Donald J. Clark of his legal right to engage in the work and perform the services of a dental laboratory technician and asserting that the said Donald J. Clark is in possession of none of these said rights."

WHEREFORE, Plaintiff prays Defendant's "DIVISION II, CROSS-PETITION" be dismissed at Defendant's cost and that judgement be rendered for Plaintiff as prayed in its original Petition.

DIVISION II

Comes now State of Iowa and for further answer to Defendant's "DIVISION II, CROSS-PETITION" shows the Court:

Par. 1. That the aforesaid "CROSS-PETITION" purports to be a petition for Declaratory Judgement.

Par. 2. That R.C.P. 262, rules of Civil Procedure provides as follows:

> "Any person interested in a contract, oral or written, or a will, or whose rights, status or other legal relations are affected by a statute, or any municipal ordinance, rule, regulation, contract or franchise, may have determined any question of the construction or validity thereof or arising thereunder, and obtain a declaration of rights, status or legal relations thereunder."

Par. 3. That the aforesaid, "CROSS-PETITION" shows on its face that it does not seek to have a contract constructed.

Par. 4. That the aforesaid "CROSS-PETITION" shows on its face that it does not cite, nor does it identify or raise a question of construction under a single statute, ordinance, rule, regulation, contract or franchise.

Par. 5. That the aforesaid "CROSS-PETITION" shows on its face, when read together with the other pleadings of record that no controversy exists between Plaintiff and Defendant with respect to the rights or status of "dental labora-

tory technicians", as such, but only as to whether the Defendant, who incidentally styles himself a "dental laboratory technician" has committed certain acts, as alleged in Plaintiff's Petition, for which a license to practice dentistry is required under statutes cited in the aforesaid Petition of Plaintiff, wihout first procuring the aforesaid license.

WHEREFORE, Plaintiff prays the Defendant's "DIVISION II, CROSS-PETITION" be dismissed at Defendant's cost and that judgement be rendered for Plaintiff as prayed in its original Petition.

APPENDIX D

IN THE SUPREME COURT OF IOWA

STATE OF IOWA ex rel.)
DR. EDMUND G. ZIMMERER, Filed February 8, 1961.
Commissioner of Public Health)
of the State of Iowa
Appellee) 255
VS 50187
DONALD J. CLARK, d/b/a)
Public Dental Laboratory
Appellant)

Appeal from Pottawattamie District Court . . . . Bennett Cullison, Judge.

Suit in equity by the Commissioner of Public Health asking the defendant be enjoined from practicing dentistry without a license. Defendant by way of cross-petition seeks declaratory relief. The trial court granted injunctive relief and denied declaratory relief. Defendant appeals.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS.

H. S. Life, of Oskaloosa, for appellant.

Norman A. Erbe, Attorney General, Leonard C. Abels, Assistant Attorney General, Matt Walsh, Special Assistant County Attorney, and Keith Stapleton, Special Assistant Attorney General, for appellee.

THORNTON, J.

The Commissioner of Public Health brings this suit asking defendant be enjoined from practicing dentistry without a license. Defendant concedes he is not a licensed dentist, denies his activities constitute such practice, alleges affirmatively he is a dental laboratory technician and asks for a declaration of his rights as such.

The trial court enjoined defendant as follows:

"*** he is hereby enjoined either by himself or agents, in his own name or otherwise from operating a dental laboratory or in any manner engaging in the manufacture, sale, dispensing, or offering for sale of any product, device, appliance or thing designed or to be used in the oral cavity as a replacement or artificial substitution for the natural part of any human being, commonly or professionally known as a prosthetic device meaning to include any and all such devices

whether or not specifically mentioned herein."

The court did not grant defendant any declaratory relief except as is included in the above injunction. The effect of the injunction is to hold there is not area of work for him as a dental technician, except as an employee of a licensed dentist.

The questions presented are: do any of the activities of defendant constitute the practice of dentistry, and to what, if any, declaratory relief is defendant entitled?

The defendant has completed a course in a school for dental laboratory technicians and has been working as such technician for a number of years. During the past five years he has operated a dental laboratory in Council Bluffs under the trade name "Public Dental Laboratory." At the time of trial he operated as "D. Clark, Dental Technician." He manufactures, repairs and relines dentures and sells them to the general public. In the conduct of his business in Council Bluffs he has not worked for dentists, but did prior thereto. He advertises his business in the newspaper, in the yellow or classified pages of the telephone book and on the radio. In such he holds himself out as being able to maunfacture, repair and reline dentures and partials.

He states his area of work as follows: "***We repair broken dentures, reline dentures, or we can make reproductions of older models that aren't very good and we can make partials. That is, not a full plate, but partially a plate and then we can make a set of teeth and that's all. ***."

In dealing with the public he denies he touches the face or examines the oral cavity of the patient or customer. At least some of his patients signed a "Service Order" on which appears the following: "I removed my denture(s) from my mouth and I inserted the denture(s) back into my mouth all times necessary to complete the following work to satisfaction. AT NO TIME did anyone associated with this office touch my mouth."

Defendant describes the taking of an impression in his place of business in the following manner: "***I do not take

impressions but I can make the denture. I have never taken an impression from anyone. The person who needs this thing takes their own impression with my instructions and then it is done. ***We use a compound known commercially as Jelltrade which I find to be very good for that purpose. ***this is mixed up and I place this in a tray and the person is given it. I instruct him how to do this by holding it in the proper position. ***I inspect it to know whether it's detailed adequately. If it is not, then the same procedure is done again until it is good and I know it. I instruct the person to take it and put it up in back in their mouth and hold it with their tongue.***."

There is more testimony of defendant as to the directions he gives patients or customers in taking impressions to start the process of making the dentures. The testimony set out shows he is in complete charge of the taking of the impression and though he states the patient could take his own impression the foregoing demonstrates in practice what is actually done. Some witnesses testified to the defendant's touching them; others that he did not. The evidence is clear as to sales by the method described by him. Defendant contends the dividing line between practicing dentistry and performing laboratory work is in the touching of the patients; as long as this is not done he is not practicing dentistry. The dividing line is not thus to be determined.

I. It is well established the regulation of the practice of dentistry is within the police power of the state, subject to the limitation the enactment must be reasonable and have some direct, real and substantial relation to the protection of public health and welfare. Graven v. Bierring, 22 Ia. 613, 269 N.W. 801; State v. Bailey Dental Co., 211 Iowa 781, 234 N.W. 260; and Semler v. Oregon State Board of Dental Examiners, 249 U.S. 608, 55 S. Ct. 570. And it is equally well established the state may regulate the work of dental laboratory technicians. People v. A.A.A. Dental Laboratories, 8 Ill. 330, 134 N.E. 2nd 285; Crosbie v. State, Okl. Cr. 330 P. 2nd 602; State v. Anderson, 54 Wash. 2nd 156; 338 P. 2nd 740; Lees v. Oster, 8 Utah 2nd 141, 329 P. 2nd 648; Annotation, 45 A.L.R. 2nd 1243; and 70 C.J.S. Physicians and Surgeons, S 10 e, p. 841.

II. The Nineteenth General Assembly in 1882 first provided for the licensing of dentists. The Thirty-fifth General Assem-

bly in 1913 first defined the practice of dentistry. Chapter 218 of the Acts of 35th General Assembly is the forerunner of our present statutes. Our present statutes, Code of Iowa, 1958, are:

"153.1 'Practice of dentistry' defined. For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of dentistry:

"1. Persons publicly professing to be dentists, dental surgeons, or skilled in the science of dentistry, or publicly professing to assume the duties incident to the practice of dentistry."

"2. Persons who treat, or attempt to correct by any medicine appliance, or method, any disorder, lesion, injury, deformity, or defect of the oral cavity, teeth, gums, or maxillary bones of the human being, or give prophylactic treatment to any of said organs."

"153.5 Employment of unlicensed dentist. No person owning or conducting any place where dental work of any kind is done or contracted for, shall employ or permit any unlicensed dentist to practice dentistry in said place, but persons who are not licensed dentists may perform laboratory work."

Section 1 of chapter 218, Acts of 35th General Assembly, in defining the practice of dentistry, provided in part, "* * * or supply artificial teeth as substitutes for natural teeth," and provides the holding out as a person skilled in the science of dentistry is made prima facie evidence of practice.

Section 2 of said chapter 218 provided in part, "* * * but nothing in this act shall be construed to prevent a person not a licensed dentist from doing laboratory work."

Then, as now, there was not provision for licensing, or restriction placed upon the dental laboratory technician, except that he may not practice any profession unless licensed; the same restriction is, of course, applicable to all. In 1913 the technician did not have the right to practice dentistry and he does not now.

Section 153.1 and 153.5 first appeared in their present form in the Acts of the Extra Session of the Fourtieth General Assembly, H. F. 262, chapter 7. There is nothing in the changes made to indicate a change in the basic intent and purpose of the original enactments. They are simply restated and re-

codified. See Briefs of Code Commissioners' Bills, 1922, pp. 779-780.

III. Laboratory work is simply work performed in a laboratory. See definition in Webster's New International Dictionary, 2nd Ed., of laboratory both as a noun and as an adjective as used in section 153.5. And as used in said section refers to laboratory work incident to dentistry.

IV. It is apparent defendant was within the provisions of section 153.1 (1) by his advertising, he publicly professed to assume the duties incident to the practice of dentistry by holding out to the public he could furnish proper fitting dentures. He came within the provisions of 153.1 (2) in directing and instructing the patient in taking an impression of the oral cavity and in the fitting of the denture, he was then attempting to correct by an appliance a defect in an oral cavity. Insofar as the order of the trial court restrained such activities it was proper.

V. We turn to the question of declaratory relief. Defendant in his cross-petition asks that his legal rights and relations as a dental laboratory technician be declared. Plantiff replies there is no controversy between the parties as to defendant's activities as a technician, that plantiff's sole concern is with the unlawful practice of dentistry by defendant, and that defendant does not seek to have a statute construed. Though defendant does not cite section 153.5 in his pleadings, it is clear from a reading therof he is asking for construction of that section and a declaration of his rights thereunder. Plaintiff's denial of a controversy is not sustained by the evidence in view of his position here and in the trial court as well as the decree of the trial court. Plaintiff's position is that the defendant as a dental technician can only do his work under the direction of a dentist, and if we understand his argument fully, only under the direct supervision of a licensed dentist and not in a seperate establishment by prescription on behalf of a licensed dentist. Defendant's position on the other hand is he may manufacture various types of dentures and sell them to the general public and in such selling do everything necessary to insure proper fit short of touching the patient or customer.

The mere denial of interest in the case of that a controversy exists will not defeat an action for declaratory judgment. If so the rules providing therefore would be useless at the option of

the opposite party.

Rule 262, Rules of Civil Procedure, provides in pertinent part:

"Any person * * * whose rights, status or other legal relations are affected by a statute, * * * may have determined any question of the construction or validity thereof or arising thereunder, and obtain a declaration of rights, status or legal relations thereunder."

Under rule 265 the court may refuse relief where granting the same would not terminate the uncertainty or controversy.

We have repeatedly held the rules of civil procedure relating to declaratory relief are remedial and should be given a reasonably liberal construction. The basic question is whether the facts alleged show there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant a declaratory judgment. In re Estate of Turner, 250 Iowa 795, 96 N. W. 2nd 481; Wesselink v. State Department of Health, 248 Ia. 639, 80 N.W. 2nd 484; in re Estate of Pierce, 245 Ia. 23, 60 N.W. 2nd 894; Katz Investment Co. v. Lynch, 242 Iowa 640, 47 N.W. 2nd 800; and State v. Central States Electric Co., 238 Ia. 801, 28 N.W. 2nd 457. We have pointed out both in Wesselink v. State Department of Health, supra, and State v. Central States Electric Co., supra, the action arose because of the construction placed on the facts by one party and the conclusion of law which such party reached. Such party has a right to test and try that conclusion by court procedure.

The positions taken by the parties, as well as the decree of the trial court, demonstrate the need for determination is both immediate and real. The only work allowed to him in his calling as a dental technician by the following portion of the order, " * * enjoined either by himself or agents, in his own name or otherwise from operating a dental laboratory or in any manner engaging in the manufacture, ***of any product, ***" is in the employ of a licensed dentist.

Section 153.1, defining dentistry, and section 153.5, permitting persons not licensed dentists to perform laboratory work, direct a contrary result. There are no other provisions of law in Iowa regulating the sphere of activity of a laboratory worker. Section 153.1 in no way controls or attempts to control the manufacture of dentures or appliances not the sale thereof,

except as they are dispensed to correct a defect of the oral cavity. This must be done by the dentist. Likewise there is no restriction on repair of dentures or appliances, repair that does not constitute refitting or the taking of an impression, in other words, does not constitute an attempt to correct a defect of the oral cavity. A person not a licensed dentist may perform such repair.

Section 153.5 prohibits a person conducting a place where dental work is done from employing or permitting an unlicensed dentist to practice in said place, and provides further, "*** but persons who are not licensed dentists may perform laboratory work." We do not see anything in the use of the words in this section requiring laboratory work to be performed in a dentist's office, "Dental Work" as there used refers to the practice of dentistry not laboratory work. This conclusion is inescapable when compared with the prior act, section 3, chapter 218 of the Acts of the Thirty-fifth General Assembly (section 1393, Complied Code of 1919):

"It shall be unlawful for any person owning or conducting a dental office where dental work of any kind is done, or contracted for, to employ, retain, or permit any unlicensed dentist to practice dentistry in such office, contrary to the provisions of this act, but nothing in this act shall be contrued to prevent a person not a licensed dentist from doing laboratory work."

In making the change to the present form the explanatory notes in the Briefs of Code Commissioners' Bills, 1922, page 780, state, "condensed to eliminate verbiage."

We have not been cited to, nor have we found, an authority restricting the activity of the dental laboratory technicians as does the decree of the trial court.

The evidence shows use of the services and products of dental technicians and dental laboratories by licensed dentists is general in Iowa upon prescription.

It follows plantiff is entitled to a decree enjoining the defendant from in any manner selling or dispensing dentures or dental appliances of any kind or type to the general public or any member thereof, except a licensed dentist, for the purpose of correcting or attempting to correct a defect in the oral cavity of any person and from repairing or relining such appliances directly for any person, other than a licensed dentist, under conditions requiring the fitting of such repaired appli-

ance to any degree; and further enjoing defendant from in any manner publicly professing or holding out to the public he is able to or does, in any manner, perform any duties incident to the practice of dentistry.

And defendant is entitled to a decree declaring his right to manufacture, repair, reline and market dentures or dental appliances of any kind or type, at a place other than a dental office and other than as an employee of a licensed dentist, except the marketing of such appliances shall not be contrary to the provisions enjoining defendant in the foregoing paragraph.

The decree of the trial court is affirmed in part, reversed in part, and remanded for decree in conformity with this opinion. The costs are taxes one-half to appellant and one-half to appellee. AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS.

All Justices concur, except BLISS and THOMPSON, J.S., who take no part.